

Memorandum for Mr. Belmont

describes the situation. The prosecution claims that this is a mere quibble over the use of the word deported.

6. The flimsy charge that the prosecution made false representations to the court is on its face absurd. This argument points out that the statement of the prosecutor made to the court that Sobell did not go to Mexico on a visa is true since Sobell travelled on a tourist card which differs from a visa. Further, the statement of the prosecutor concerning ~~charge~~ Sobell is complaining was made to the court on a motion for arrest of judgment after the verdict was in and it could not have influenced the jury.

7. The moving papers failed completely to support the charge of suppression of evidence. This argument shows Sobell had knowledge of the location of his property taken from him at the time of his arrest and he never attempted to obtain it for use at the trial although legal remedies did exist for claiming his property.

8. Sobell has had more than ample opportunity to raise his present contentions in the past; and his contentions have been previously presented and rejected. This argument points out Sobell failed to raise the question of his Mexican arrest before the trial although he did make several pretrial motions. Also, Sobell introduced no evidence on his own behalf at the trial. Also states all points in this motion have been previously decided in previous appeals.

ACTION:

For your information.

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J.P.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-vs-

MORTON SOBELL,

Defendant.

AFFIDAVIT IN
OPPOSITION TO
MOTION UNDER
28 USC §2255

J 134-245

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

PAUL W. WILLIAMS, being duly sworn, deposes
and says:

1. I am the United States Attorney for the
Southern District of New York and appear for the
United States of America in opposition to this
motion. The facts contained in this affidavit are
stated upon information and belief based upon the
files and records in this case.

2. The moving papers of the defendant Morton
Sobell and the files and records of this case con-
clusively show that the prisoner is entitled to no
relief. The alleged grounds for Sobell's petition
are that the prosecuting authorities intentionally
(1) "used false and perjurious testimony and evi-
dence", (2) "made false representations to the
court", and (3) "suppressed evidence". This affi-
davit will show that in the light of the record in
this case these contentions are completely untenable.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-21-87 BY 3042 PWT-JAR

101-2483-1302
enclosure

Sobell's Guilt Was Made Entirely Clear
By Substantial Evidence Which the Jury
Believed, and Which Sobell Does Not
Now Attack.

3. The testimony and evidence which Sobell alleges was false was the testimony of Immigration Inspector James S. Huggins and Government Exhibit 25, a manifest bearing the notation "Deported from Mexico" which Huggins prepared on the return of Sobell to the United States. It will be demonstrated below that Sobell's petition itself establishes the accuracy of this evidence. At the outset however it is important to place the evidence in its context. Sobell asserts that this evidence was essential to the prosecution's entire case against petitioner. Yet the charge upon which the Trial Judge sent the case to the jury stated in part:

".... to determine whether Morton Sobell is a member of the conspiracy, you are only to consider the testimony of Max Elitcher, William Danziger and the testimony relating to the defendant Sobell's alleged attempt to flee the country. If you do not believe the testimony of Max Elitcher, as it pertains to Sobell, then you must acquit the defendant Sobell."
(2353) (Emphasis Added)

On that charge the jury rendered a verdict of guilty against Sobell. The jury therefore, believed the testimony of Max Elitcher. The present attack upon the judgment of conviction should be considered in the light of the facts established by the testimony of Max Elitcher, William Danziger and the evidence of Sobell's attempt to flee the country. A recital of those facts will serve to place in proper perspective the evidence which Sobell now attacks in his attempt to set aside the judgment.

Sobell's Participation in the
Espionage Conspiracy Was Established
by the Testimony of Elitcher.

4. The testimony of Elitcher which the jury believed established the following facts:

5. In 1939 Morton Sobell and Max Elitcher, former classmates at college, roomed together in Washington, D.C., where both worked at the Bureau of Ordnance of the Navy Department (264, 296-97).^{*} Elitcher at this time was a member of the Communist Party in Washington, having joined through efforts of Sobell (264-68). As chairman of Elitcher's Communist Party group, Sobell instructed the members to continually support the cause of Soviet Russia (R. 299-305). Sobell remained in the group until he left Washington in September, 1941 (297, 305, 312).

6. In June 1944, Julius Rosenberg, another former classmate of Elitcher, came to Elitcher's home. At this time Elitcher was in the Fire Control Section of the Bureau of Ordnance working on computers for anti-aircraft fire control. This was classified military information. Rosenberg stated that the war effort of the Soviet Union was being impeded because some interests in the United States were denying it the benefit of a good deal of military information (270-1). To counteract this, he explained, many people were furnishing the

^{*} Page references are to the typewritten transcript of the trial minutes.

Soviet Union with classified military information. He asked Elitcher to obtain information about military equipment and turn it over to be supplied to the Soviet Union (270-1). Rosenberg asked about any plans or blueprints or anything that might be of value. He said that such information should be taken to New York to him where it would be processed photographically. He assured Elitcher that this would be done in a very safe manner, that is, it could be brought one night, processed immediately, and returned before it was missed (275). To further reassure Elitcher, Rosenberg confided that Sobell was among those who were giving him military information for transmission to Russia (315-17).

7. A few months later while on a camping trip Elitcher told Sobell that Rosenberg had visited him, requested him to contribute military information to Russia, and informed him that Sobell was among the contributors (320-1). At this point Sobell declared that Rosenberg "should not have mentioned my name. He should not have told you that" (320-1).

8. After the war Morton Sobell persisted in attempting to secure classified information for Rosenberg. In the course of his Navy Department duties Elitcher had occasion to visit from time to time the General Electric plant in Schenectady where Sobell was then working (329). Sobell inquired as to what work Elitcher was doing, and Elitcher told Sobell that he was in charge of the development work on a new fire control system. Sobell asked if Elitcher could get any reports on the system. Elitcher replied that only some reports of little importance were available at the time. Sobell asked if an ordnance pamphlet were available, an ordnance pamphlet being an overall description of the system, and Elitcher replied that the pamphlet had not yet been completed (329-333). On another visit later on in 1946, Sobell again asked about the status of the ordnance pamphlet (334). Upon being informed that the pamphlet was not yet completed, Sobell suggested that Elitcher see Julius Rosenberg in regard to it (335).

9. Elitcher followed Sobell's suggestion and saw Rosenberg in New York. He told Rosenberg about his work in charge of the development of a new fire control system. Rosenberg interrupted and said there was a leak in his espionage setup which was causing some difficulty and that it was necessary to take some precautions. He told Elitcher it would be best not to see him further until notified to do so (338-40).

10. Sobell himself had access to important military information. While he was employed by General Electric he worked on Servo mechanisms which were used to control military equipment. These mechanisms take intelligence information and reproduce it mechanically or electrically (334). A great deal of Sobell's work was research on projects for the United States Government. Sobell became an expert in this line and was doing very important work at General Electric (485). It may be noted that David Greenglass testified that Rosenberg said he had contacts in upstate New York, including one at the General Electric Company in Schenectady who furnished him with information (731-2).

11. In the latter part of 1947 Sobell shifted his employment from General Electric to the Reeves Instrument Company in New York City (342). He continued to work on classified military projects and was in an important position overseeing the work of others in addition to doing his own work (342, 494-5). Reeves Instrument Company was doing

military work for the Armed Forces in connection with fire control systems and radar (283). Sobell was in charge of the development of a plotting board (343).

12. At about this time Elitcher visited the Reeves Company and saw Sobell. Over luncheon Sobell asked whether Elitcher knew of any engineering students or engineering graduates "who were progressive, who would be safe to approach on this question of espionage, of getting materials." Elitcher replied that he did not, but that if somebody came along he would let Sobell know (276-7, 344). Sobell said the intent of getting these people was in order to approach them concerning espionage if they could get in a position where classified military information would be available to them (279).

13. Elitcher then informed Sobell that he was having difficulty with his wife. Sobell became very concerned and asked Elitcher whether his wife knew anything about "this espionage business" (344). Elitcher said he thought she might know something but that he wasn't sure. Sobell replied "Well, that isn't good" (345).

14. In October, 1948, Elitcher went to work for the Reeves Instrument Company and lived close to Sobell. Elitcher and Sobell drove to work together. Sobell again sought from Elitcher the names of persons who might be recruited for espionage work, and added that because of some increased

security measures, it would be best to find engineering students who were not involved in any progressive activity so that they would not be suspected. (345-6).

15. Before Elitcher left the Bureau of Ordnance to go to the Reeves Instrument Company he told Sobell of his decision to leave the Bureau. Sobell said that before Elitcher acted on this decision he should talk to Julius Rosenberg. Sobell said "Don't do anything before you see him. I want to talk to you about it, and Rosenberg also wants to speak to you about it". Accordingly, Elitcher met with Sobell and Rosenberg. At this meeting Rosenberg said he was sorry to hear of Elitcher's decision to leave the Bureau of Ordnance because he needed somebody to work at the Navy Department for this espionage business. Rosenberg asked Elitcher to change his mind. Sobell agreed with Rosenberg in his trying to convince Elitcher to stay down at the Bureau of Ordnance. Elitcher however decided not to change his plans (346-9).

16. At the end of July and the beginning of August, 1948, Elitcher drove up to New York from Washington in order to look for a place to live, and went to Sobell's house to stay. Upon arrival at Sobell's house, he told Sobell that he thought he had been followed by one or two cars from Washington to New York. At this point, Sobell became very angry and said that Elitcher should not come to the house under those circumstances.

Sobell told Elitcher that he should leave the house and go some other place to stay. After some further conversation, Sobell finally agreed that Elitcher should stay and did not seem to believe that Elitcher had been followed (352-3).

17. Sobell then said that he had some valuable information in the house, something that he should have given to Julius Rosenberg some time ago and had not done so; it was too valuable to be destroyed and yet too dangerous to keep around. Sobell said he wanted to deliver it to Rosenberg that night. Elitcher told Sobell that it was a dangerous and silly thing to do. Sobell however insisted and asked Elitcher to go along. After some argument, Elitcher agreed to go. Sobell took with him a 35 millimeter can of film (354).

18. Upon getting into the car Sobell put this film into the glove compartment. Sobell drove to Manhattan and parked outside the Journal American Building which was near Knickerbocker Village and the apartment of Julius Rosenberg. There Sobell took the can from the glove compartment and left (354-5, 459).

19 Pursuant to Sobell's instructions, Elitcher parked the car facing the East River Drive on Catherine Slip. Sobell returned in about half an hour and as they drove off Elitcher said to him: "Well, what does Julie think about this, my being followed?" Sobell said: "It's all right; don't be concerned about it; it's o.k." Sobell then said Rosenberg told him he once talked to Elizabeth Bentley on the phone but he was pretty sure she didn't know who he was and everything was all right (354-5).

20 The testimony of Elitcher on direct examination and cross, which the jury heard and believed, therefore clearly established that Sobell was a full fledged participant in a conspiracy to commit espionage on behalf of the Soviet Union.

Evidence Not Here Attacked
Also Established that Sobell's
Flight to Mexico Was Pursuant
to a Prearranged Plan to Escape
to Russia

21 The evidence of the pattern of escape of the conspirators shows that in 1950, law enforcement authorities were closing in on the Rosenberg spy ring. This occasioned Rosenberg to outline a pattern of flight for David Greenglass and his wife, which would take them to Mexico, then via the

seaport of Vera Cruz to Europe and ultimately to the Soviet Union (745-50, 1019). Shortly after Greenglass and Harry Gold were apprehended, Sobell began to follow the very same pattern (251-2).

22. Accompanied by his immediate family, he went to Mexico City where he falsely explained to a neighbor that his departure from the United States was prompted by a desire to avoid military service (1348-50, 1417-19). From Mexico City he went to Vera Cruz and Tampico, the two leading seaports of Mexico, using no less than five false names (1358-72). He even took the precaution of sending letters to relatives in the United States through an intermediary, William Danziger, and in so doing used still other fictitious names on the return address (1252-56). His apprehension and return to the United States by the Mexican police prevented him from successfully perfecting his flight out of Mexico to points abroad (1525-26).

23. On the trial, Sobell did not contest the evidence of his statement in Mexico City to Manuel Giner de los Rios that he wished to leave Mexico because he wished to avoid the authorities of the U. S. Army who were looking for him. There was no cross-examination of this witness, nor did defense counsel cross-examine the witnesses establishing the use of fictitious names by Sobell in the course of his trip to the port cities of Vera Cruz and Tampico (1356-1373) Sobell does not now attack this evidence.

24. The record of evidence not now challenged therefore establishing not only his participation in the espionage conspiracy, but also the evidence

of flight from which the jury could properly draw an inference of his consciousness of guilt.

25. Since the trial Sobell has acknowledged not only his use of aliases in Mexico, but also that he made inquiries about passage to Europe and South America for all his family. In an affidavit, dated September 23, 1953, filed with the Court of Appeals for this Circuit in opposition to the motion of the United States Attorney for affirmance of the decision of this Court denying Sobell relief under his previous motion under Section 2255, Sobell admitted the use of fictitious names and stated that "I left the family in the Mexico City apartment and travelled around Mexico to Vera Cruz and Tampico, even using false names and inquiring about passage to Europe and South America for all of us." (His affidavit goes on to contend that he had changed his mind and intended to return to the United States when apprehended).

26. He therefore does not challenge the facts established by the evidence of flight, but only urges that the jury should not have drawn any adverse inference from the facts. That however was clearly a matter for the jury to decide.

Sobell's Present Contention that
The Evidence of His Deportation
Was Essential to the Prosecution's
Case Is An Afterthought

27. Upon his summation, counsel for Sobell recognized that the jury's verdict with respect to Sobell depended primarily upon the testimony of Elitcher:

"Will you tell me if you take Elitcher's testimony out of this case, is there any conspiracy against us?" (2240-1).

28. Sobell's present contention that the evidence of his deportation from Mexico was essential to the prosecution's entire case is also contradicted by the brief submitted for him by his attorneys in the Court of Appeals on appeal from his conviction. At that time Sobell's contention was that the evidence was completely irrelevant and stated:

"There was no issue before the jury which could possibly have made the card relevant evidence on this trial. The only remotely relevant fact which it tended logically to establish was that Sobell had been in Mexico. This, however, had already been five times proved and thrice conceded. It is evident that the whole purpose and intent of the prosecutor was to impugn the defendant Sobell as one who had committed some offense for which he had been found to be unworthy of the privilege of residence by the Mexican government.

"There is not any doubt about this, or how the jury would have taken it. Deportation is commonly understood to mean 'The sending back of an undesirable or criminal alien to the country whence he came'. (Funk & Wagnalls, New Standard Dictionary) The jurors could have taken no view of the matter save that the Mexican authorities had found the person or the conduct of Sobell offensive to them." (emphasis added) (Brief of Morton Sobell, p. 57).

29. The Court of Appeals pointed out that the evidence was not irrelevant and that

"...Sobell's forced return to the United States was certainly relevant to the government's theory that he had fled to Mexico to escape prosecution, for otherwise the jury might have inferred that he had returned voluntarily to stand trial." 195 F. 2d at p. 602.

30. Counsel for Sobell have now accepted the relevance of this evidence, which they earlier refused to recognize, and now assert that the evidence was of such a high order of materiality that it was essential to the prosecution's case. True evaluation of the significance of this evidence lies between those two extremes. The evidence was relevant and was one item among many showing the pattern of Sobell's attempt to escape from justice.

The Evidence that Sobel was "Deported from Mexico" was Not False. "Deported Is an Apt Word to Describe His Forced Return to the United States."

31. Sobell contends that the notation "Deported from Mexico" was false. His own petition, despite its inaccuracies, distortions, and untruths only confirms the accuracy of that notation. To deport means to take or send away forcibly or to banish. Funk & Wagnalls New Standard Dictionary (1949 ed.) gives as the first definition of the verb "deport":

"to carry off or away; transport, especially to take or send away forcibly, as to a penal colony; banish, as, the prisoners were deported by boat..."

There can be no doubt that the evidence established and Sobell's petition confirms that he was deported from Mexico. Sobell was ejected from Mexico against his will, and the word "deported" inaccurately describes that situation.

32. Sobell's quarrel with the evidence apparently stems from the fact that he was deported by the Mexican Security Police rather than by the Mexican Immigration Service. He contends that "deported" connotes action by the immigration authorities.

33. This contention is in substance no more than a quibble that the witness Huggins should have written "ejected" instead of "deported". Moreover, the relevance of the evidence was simply to show Sobell's forced return to the United States. Surely it was immaterial for this purpose whether the Mexican Security Police or the Mexican Immigration Service accomplished his forced return .

34. The jury could not have been misled in any respect. The Court ordered the prosecution to produce the witness who made the notation. Inspector James S. Huggins testified that he made the notation as a result of his own observation, that this was a customary thing for him to do as an Immigration Inspector in cases of similar character, and it was something he did as a part of his duty. Huggins testified that the Mexican Security Police brought Sobell into his office. He stated that the information contained in the words "Deported from Mexico" was not anything which had been given him by the Mexican authorities, nor was it based upon any Mexican documents, and that it merely expressed his own observation (1520-1534). This testimony accurately informed the jury of the facts of Sobell's departure from Mexico as observed by Huggins.

35. Had counsel desired to cross examine Huggins further to establish what he meant by the use of the word "deported" they were at liberty to do so.

36. Sobell now argues that the notation "Deported from Mexico" tended to indicate that he would not have returned voluntarily to the United States. The inferences to be drawn from the evidence were for the jury. Sobell had every opportunity to present any evidence which he wished to bring to the jury's attention. He introduced none and cannot now complain if the jury found that the evidence against him established his guilt beyond a reasonable doubt.

37. Sobell raised this very contention in the Court of Appeals on appeal from his conviction. The Court stated:

"In his reply brief, Sobell says: 'We do not contend, as the Government intimates that its violation of domestic or international law exempts Sobell from trial, but merely that he should be restored the choice ... of entering the United States voluntarily or involuntarily ... What was violated was his right to be free from unlawful molestation or assault by his own Government; and his right not to be convicted by an "admission" wrested from him by a violent act.' It seems particularly inconsistent, therefore, for Sobell not to have introduced evidence, during the trial, of his kidnapping to contradict the government's evidence of legal deportation." 195 F. 2d at page 603. Footnote 20.

The Flimsy Charge that the Prosecutor Made False Representations to the Court is on its Face Absurd.

38. The charge that the prosecutor made false representations to the Court amounts to no more than this: In support of a motion in arrest of judgment, Sobell submitted an affidavit concerning the circumstances of his departure from Mexico. This affidavit stated that on his apprehension Sobell tried to show his visa to the

Mexican Security Police. The prosecutor then pointed out to the court that this could not have been true because Sobell did not go into Mexico with a visa (2424).

39. Sobell now asserts that this was a wilful false representation to the court of sufficient magnitude to be considered as one of the grounds for setting aside his conviction. He does this by equating a visa with a tourist card. Both a visa and a tourist card can serve as an expression of permission by one Government for a citizen of another country to enter its borders. A visa however is customarily endorsed upon a passport; a tourist card is a separate travel document not annexed to a passport. The prosecutor was correct when he said that Sobell did not travel into Mexico with a visa. What Sobell had when he went to Mexico was a tourist card.

40. Furthermore, this statement, made in the course of argument upon a motion in arrest of judgment after all of the evidence had been presented and after the jury had rendered its verdict of guilty, obviously had no effect whatsoever upon the conviction of the defendant Morton Sobell. The context likewise clearly shows that the Court's decision denying the motion in arrest of judgment was made upon grounds far more substantial than whether Sobell did or did not possess a visa upon his entrance into Mexico (2403-2425).

The Moving Papers Fail Completely
To Support the Charge of Suppression
of Evidence.

41. Apart from the baseless allegations with respect to the evidence of Sobell's deportation from Mexico, the charge that the prosecution suppressed evidence seems to

rest upon paragraphs Sixty-Sixth and Sixty-Seventh of the petition. These paragraphs allege the suppression of documents taken from Sobell by the Mexican Secret Police at the time of his apprehension. The petition alleges that these documents were transmitted to the prosecution. These included Sobell's tourist card and a vaccination certificate. The allegation that these documents would have been "helpful to petitioner in establishing his innocence" is the statement of a conclusion which this court is under no obligation to accept.

42. If however Sobell or his counsel considered that these documents would in any way have tended to establish his innocence, they should have sought the introduction of those documents into evidence at the trial. There is no allegation whatsoever in the petition of any attempt by the defense to obtain the production of these documents under Rule 16 of the F.R.Cr.P. The petition is completely barren of any explanation as to why the defense failed to take any steps to obtain the inspection or introduction into evidence of these documents at the trial. Sobell does not claim to have been in any ignorance as to the whereabouts of these documents. (See par. 35 of his petition). As to the conclusion which might have been drawn by the jury from these documents, the tourist card would merely have been cumulative of the departure of the Sobell family for Mexico. As Sobell stated in his brief on appeal: "The prosecution showed, by evidence which itself tended to become cumulative, that the appellant Sobell had left the United States, with his family, for a trip to Mexico in the summer of 1950."

43. As to the vaccination certificate, that would seem to be at least as consistent with an intention to travel to some other part of the world as to a desire on Sobell's part to return to the United States.

44. At any rate, such inferences were for the jury to draw upon the evidence presented to them. Sobell's failure to introduce evidence which he belatedly considers would have been helpful to him is no reason whatsoever for a new trial.

Sobell Has Had More Than Ample Opportunity To Raise His Present Contentions In The Past; And His Contentions Have Been Previously Presented And Rejected.

45. On August 3, 1950 a warrant for Sobell's arrest was issued by a United States Commissioner for this Court. Pursuant to this warrant Sobell was arrested at Laredo, Texas on August 18, 1950. In the light of these facts of record in this Court, the assertion in Sobell's petition (Par. 35 footnote) that he was arrested without a warrant can mean only that the arresting officer did not have the warrant in his possession at the time of his arrest, which is of course entirely proper under Rule 4 of the Federal Rules of Criminal Procedure.

46. On February 5, 1951 Sobell applied to this Court for a writ of habeas corpus charging that his detention was unlawful. If he had been mistreated by the Mexican Security Police in the fashion which he now alleges, he must have been aware of those facts at the time he sought the writ of habeas corpus. Nevertheless he made no mention of such alleged mistreatment at that time, and based his petition solely upon alleged claim that the indictment was too vague and an argument that the statute violated the First Amendment. This petition was denied by Judge Leibell on February 5, 1951.

47. Sobell was not unaware of his opportunities for pre-trial discovery provided by the Federal Rules of Criminal Procedure. He made motion for inspection of Grand Jury minutes and for bills of particulars. Yet at that time, he made no attempt to obtain the documents which he now contends the Government suppressed.

48. During the trial Sobell introduced no evidence in his own behalf. His counsel were not unaware of their opportunities to obtain evidence, as the following colloquy shows:

"Mr. Collenburg: I am here on behalf of the Mexican Government. Last week a subpoena duces tecum which I have here was served upon the Consulate here to produce certain records in the Court. The Government asked me to appear specially to protest this service and to ask that the subpoena be vacated.

At the same time the Ambassador says that if a proper request is made for these documents through official channels he will be very happy to comply with such request.

The Court: What is your name?

Mr. Collenburg: Mr. Collenburg of Hardin, Hess & Eder.

Mr. Kuntz: It becomes academic, your Honor. I am not going to even introduce it.

The Court: You have no objection to my dismissing it?

Mr. Kuntz: No.

The Court: The subpoena is being withdrawn."
(1770-1)

In particular his counsel knew where to obtain evidence that Sobell had used his own name on the flight from New York to Mexico City. His counsel stated on summation.

"Tell me, is it hard to find out if you take a trip to Mexico? I can probably find out in two hours if you took a trip to Mexico. You need a visa - that is the Mexican Consulate.

You go and buy an airplane ticket.

How many air lines are there to Mexico? I can find out in two hours without Mr. Norton and without Mr. Harrington and without Mr. Branigan - I could find out by myself.

I would send my clerk out and he will find out if you went to Mexico and if you sent in your own name." (2256)

In spite of the fact Sobell introduced no evidence, his counsel was permitted to assert in his summation to the jury that Sobell had used his own name in his flight to Mexico City (2256).

49. Had he desired to introduce evidence to that effect, such as the American Airlines tickets and flight manifests attached as Exhibits 3 and 4 to his Petition, there was nothing to stop him. In fact, the date of conformation of Exhibits 3 and 4 March 27, 1951, shows that these exhibits were prepared by American Airlines during the course of the trial. Sobell now offers no explanation whatsoever as to his failure to introduce this evidence at that time.

50. Sobell admitted in his affidavit of September 23, 1953 filed in the Court of Appeals for this Circuit with respect to these tickets that he had cashed in the returntrip tickets for himself and his wife, and had only retained the ticket for his daughter. Whether this failure to introduce evidence with regard to these tickets was motivated by a fear of the conclusions that would be drawn by the jury if the facts were known, or by some other unexplained reason, the choice not to bring this evidence before the jury was that of himself or his counsel, and he must now abide the jury's decision.

51. The jury rejected arguments by Sobell's counsel which are essentially the same as those now advanced again in somewhat more elaborate form. Counsel told the jury Sobell went to Mexico under his own name:

"Well, let's see about that Mexican trip. I say that Sobell and his family went down to Mexico by airplane in his own name - how do you like that? I dare him deny that. I dare Saypol to deny that. And I am telling you that if they didn't know before they spoke to Danziger that Sobell went down to Mexico by air - if you remember the testimony of Bill Danziger, he told Saypol that the day that they left, that the Sobells left, he visited there to pick up some drill, and that they told him that they were going to Mexico by air line, so that at least - at least from the time that Saypol or his men spoke to Danziger, they knew that." (225-6)

Counsel attempted to explain Sobell's use of aliases in Mexico on his travels to Tampico and Vera Cruz as "a brainstorm" (2257.) He said to the jury "It is none of our business" (2259.)

52. Sobell's counsel also argued to the jury that Huggin's testimony did not establish that Sobell was deported from Mexico:

" . . . look at that notation at the bottom in Huggin's handwriting 'Deported from Mexico'. . . Now wait a second, just a second. Mexico you know is a civilized country. Mexico has a government; it has courts; it has Immigration officials; it has the same kind of people and the same kind of institutions we have. Do we deport anybody or prove deportation by having Mr. Saypol get on the stand and say 'From my observation he was deported from Mexico'?" (2260-1.)

The jury was not persuaded by the summation of Sobell's counsel and by their verdict rejected the very arguments which Sobell now raises.

53. Sobell then moved in arrest of judgment on substantially the same grounds which are now asserted here as the basis for a new trial. (2403-2425) Counsel admitted to the Court that he was aware of these alleged facts during the trial itself, and that he had not chosen to introduce evidence to support them (2407, 2420) The assertion that the notation "Deported from Mexico" was a falsehood and that the prosecution must have known it to be false was made at that time (2403-4). So was the assertion that Sobell's departure from the United States was not under circumstances of secrecy and that he had bought a ticket in his own name (2420). (It may be noted that the Government's proof that Sobell had used fictitious names while in Mexico in his travels to the port cities was in no way contradicted by the fact that Sobell preferred to use his own name on the flight to

Mexico.) The Court commented:

"You didn't even prove that he had left the United States under his own name. You could have called the Airlines official. You inferred that he had and I permitted you to argue that to the jury" (2420-1).

54. Judge Kaufman rejected these arguments of the defendant when they were made on the motion in arrest of judgment. On the appeal, Sobell's counsel briefed many arguments including the arguments that the notation "deported from Mexico" was prejudicial to him, that his forcible ejection from Mexico deprived him of the opportunity to return voluntarily, as well as the argument that the circumstances of Sobell's departure from Mexico amounted to kidnapping and a violation of international law such as to deprive the Court of jurisdiction.

55. The Court of Appeals rejected all of these contentions in an opinion which makes clear the inadequacy of Sobell's present petition:

"When the Government introduced evidence to show that Sobell had been legally deported from Mexico (evidence clearly contradictory to Sobell's present assertion), he made no move to bring to light the facts of his alleged illegal abduction. He preferred to take his chances on the verdict, withholding his trump card until the trial was over. The Federal Rules of Criminal Procedure allow no such tactics,"
195 F.2d at page 603 (2d Cir. 1952).

56. After the Court of Appeals affirmed his conviction, Sobell petitioned for rehearing, but did not rely upon the points now advocated. Sobell again raised the alleged improper introduction of the "deported" card and his alleged kidnapping in his petition to the Supreme Court for certiorari. After the denial of certiorari, 344 U.S. 838, and the denial of a rehearing, 344 U.S. 889, Sobell attacked his conviction by a motion under

28 U.S.C. §2255. This petition alleged that the prosecuting authorities had knowingly used false testimony as well as a variety of other contentions. On this motion the petitioners asserted that the prosecution used the testimony of David Greenglass and Ben Schneider knowing it to be false. Judge Ryan rejected these contentions stating:

"I find no relevant or material issue of fact raised by the petitions, which requires a hearing thereon or which renders the taking of oral testimony either necessary or helpful. I have concluded, after affording the attorneys for petitioners full opportunity to argue the legal problems presented by the petitions and to make proffers of proof, that the petitioners are entitled to no relief, that the court which rendered judgment had jurisdiction, that the sentences imposed were authorized by law and are not otherwise open to collateral attack on any of the grounds urged by the petitioners, and that full and complete enjoyment of the constitutional rights of petitioners has been extended them and has in no way been denied or infringed."

108 F.Supp. 798, 799-800 (S.D.N.Y.1952)
affirmed 200 F.2d 666 cert. denied 345 U.S.
965, rehearing denied 345 U.S. 1003.

57. The relief sought in Sobell's first petition under Section 2255 was substantially the same as the relief he now seeks. A portion of 28 U.S.C. §2255 is quoted at page 2 of Sobell's present petition, omitting the following pertinent sentence:

"The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner." 28 U.S.C. §2255.

58. Sobell states in his present petition: "Petitioner has made prior application to the Court for relief pursuant to Title 28 U.S.C. Sec. 2255, but not on the grounds or facts set forth herein." Sobell does not explain his failure to assert the present grounds in his prior petition. Furthermore, under §2255 the fact that similar relief was sought in the prior

petition, means that this Court is not required to entertain this motion.

59. This defendant has been tried by a fair and impartial jury under the most perfect procedures for obtaining justice yet developed in the history of mankind. He has had every opportunity to challenge the evidence presented against him. All twelve jurors were convinced beyond a reasonable doubt of his guilt. He has been fairly convicted of participation in the conspiracy to furnish the Soviet Union with our military secrets. "His activities in furtherance of this conspiracy continued well into the cold war period, long after it was apparent that Russia was hostile to the United States." 109 F.Supp. at p.382 (S.D.N.Y. 1953).

60. The baseless charges of perjury and suppression of evidence which he now asserts are elaborations of arguments essentially on matters which he claims to have known prior to the trial and which have been advanced and judicially rejected time and time again.

61. His petition taken together with the previous record in this case shows conclusively that he is entitled to no relief. His attempt to impugn the integrity of the judicial processes by which he was convicted should be rejected.

PAUL W. WILLIAMS,
United States Attorney for the
Southern District of New York

Sworn to before me

this day of May, 1956.